

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE JOSEPH	:	
	:	Case No. 4:06-CV-2161
Plaintiff	:	
	:	
v.	:	(Judge McClure)
	:	
DAVID KEENHOLD, et al.	:	(Magistrate Judge Smyser)
	:	
Defendants.	:	

**ORDER**

August 20, 2007

**BACKGROUND:**

Plaintiff, a prisoner proceeding pro se, filed this 42 U.S.C. § 1983 action on November 3, 2006. Plaintiff named the following as defendants: (1) David Keenhold, the Warden of the Monroe County Correctional Facility (“MCCF”); (2) Gary McFarland, the Director of Treatment at the MCCF; (3) E. David Christine, the District Attorney of Monroe County and a member of the Prison Board of Monroe County; (4) the Honorable Ronald Vican, a judge of the Court of Common Pleas of Monroe County and a member of the Prison Board of Monroe County; (5) Robert Nothstein, identified as a Board Commissioner; (7) Suzanne McCool, identified as a Board Commissioner; and (8) Todd Martin, the Sheriff of Monroe County. Plaintiff’s claims arise out of the alleged inadequacy of the prison law

library and the defendants' subsequent handling of his complaint.

On November 14, 2006, United States Magistrate Judge Andrew Smyser noted several deficiencies in plaintiff's original complaint, and gave the plaintiff an opportunity to amend his complaint. Plaintiff filed his first amended complaint on December 4, 2006. After noting additional deficiencies contained in this amended complaint, the magistrate judge gave the plaintiff an opportunity to file a second amended complaint, which plaintiff did on July 19, 2007.

On July 30, 2007, the magistrate judge issued his thorough thirteen-page report and recommendation. After reviewing plaintiff's second amended complaint, the magistrate judge concludes that plaintiff refuses to correct the deficiencies that existed in his first amended complaint and instead prefers to proceed with his original complaint. As a result, the magistrate judge recommends that plaintiff's first and second amended complaints be stricken from the record, and that plaintiff be granted permission to proceed with his original complaint. In addition, the magistrate judge recommends that the claims against defendant Vican be dismissed because he is entitled to absolute immunity, and that the claims against defendants Keenhold, McFarland, and Martin be dismissed because plaintiff fails to allege these defendants were personally involved in this matter. The magistrate judge recommends the remaining claims be remanded for further

proceedings.

Plaintiff has not filed any objections to this report and recommendation.

**DISCUSSION:**

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

We will adopt the magistrate judge's report and recommendation in full. After reviewing plaintiff's second amended complaint, we agree with the magistrate judge that plaintiff intends to proceed with his original complaint. We also agree that based on that original complaint, the claims against defendants Vican, Keenhold, McFarland, and Martin should be dismissed. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge in reaching these recommendations.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The court adopts in full United States Magistrate Judge J. Anderw Smyser's report and recommendation. (Doc. Rec. No. 16.)

2. Plaintiff's first and second amended complaints are stricken from the record. (Rec. Doc. Nos. 7 and 15.)
3. Plaintiff may proceed with his original complaint. (Rec. Doc. No. 1.)
4. Plaintiff's claims against defendants Vican, Keenhold, McFarland, and Martin are dismissed for failure to state a claim upon which relief can be granted.
5. The case is remanded to the magistrate judge for further proceedings.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge